

STATE OF MICHIGAN  
COURT OF APPEALS

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LUELLA J. WHELTON,

Plaintiff/Counterdefendant-  
Appellant,

and

KELLY SUE WHELTON,

Plaintiff-Appellant,

v

MONICA DEMERELL, Personal Representative  
of the Estate of MICHAEL D. DEMERELL, and  
TERESA G. DEMERELL,

Defendants/Counterplaintiffs-  
Appellees.

UNPUBLISHED  
November 17, 2005

No. 255403  
Crawford Circuit Court  
LC No. 01-005535-CH

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Before: Donofrio, P.J. and Zahra and Kelly, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court order that reformed an executor's deed and quieted title in defendants. We affirm.

Plaintiff Luella Whelton<sup>1</sup> was the original vendee of a land contract who assigned the contract to Michael and Teresa DeMerell. Plaintiff had also given the DeMerells a quit claim deed to the property. After the DeMerells moved out of the property, the estate of the deceased contract vendor, Roland Tubbs, gave plaintiff an executor's deed to the property without first foreclosing on the DeMerells' interest. Approximately eight years later, plaintiff tried to sell the property but found the DeMerells' interest in the chain of title and brought the original claim to quiet title. Teresa DeMerell received a judgment for divorce from Florida, having moved there, and quit-claimed her interest to plaintiffs. Michael Demerell died during the pendency of the

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<sup>1</sup> References to "plaintiff" in the singular throughout this opinion are to Luella Whelton.

suit. Plaintiffs failed to file a notice of *lis pendens*, and the property was sold to a bona fide purchaser during probate of Michael DeMerell's estate.

Under the doctrine of equitable conversion, a buyer who performs under a land contract acquires equitable title, and the vendor holds the legal title to the property in trust. If the purchaser pays part of the purchase price and takes possession, the purchaser acquires an equitable title, and the vendor is a trustee of the legal title for the purchaser to the extent of the payment. *Steward v Panek*, 251 Mich App 546, 555-556; 652 NW2d 232 (2002). Further, the vendee purchases the property upon signing the land contract and acquiring his equitable interest. At that point, the vendee acquires seisin and a present interest in the property. *Graves v American Acceptance Mortgage Corp (On Rehearing)*, 469 Mich 608, 616; 677 NW2d 829 (2004).

In this case, equitable title rests in defendants because plaintiffs assigned the land contract and quit claimed their interests to the DeMerells. Regarding legal title, it was incumbent upon the vendor, Tubbs or his estate, to seek foreclosure upon default and quiet title. This was never done. The trial court properly found those facts and, applying them to the law, used equity to reform the deed to reflect defendants as the vendees, and quiet title in defendants, as of the date the executor's deed was delivered, i.e., April 29, 1992. Thus reformed, the contract conveyed legal title to defendants as of that date and quieted title in defendants as well. Therefore, defendants had both equitable and legal title to the property at the time the property was sold under probate.

We decline to address plaintiffs' abandonment claim because it was not specifically alleged in the complaint and was not raised or addressed in the trial court. See *Shuler v Michigan Physicians Mutual Liability Co*, 260 Mich App 492, 524; 679 NW2d 106 (2004). At the most, plaintiffs' counsel mentioned "abandonment" at the hearing on the motion for partial summary disposition, but did not argue the claim further and it was not a basis for the trial court's denial of that motion. We do not believe that such a casual reference is enough to preserve the issue for appellate review.

Affirmed.

/s/ Pat M. Donofrio

/s/ Brian K. Zahra

/s/ Kirsten Frank Kelly